

8009903

Daniel P. Schrader – Bar No. 145670
 Bryan P. Kerney – Bar No. 208767
FISCHER SCHRADER, LLP
 888 Munras Avenue
 Monterey, California 93940
 Telephone: (831) 372-9200
 Facsimile: (831) 372-9220

E-FILED 2/26/09

Attorneys for Defendant,
 LARRY GABRIEL, ARCHITECT

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

KATHLEEN VENTIMIGLIA, individually and
 as the Guardian Ad Litem for STEPHEN
 VENTIMILIA and KELLIE VENTIMILIA,

Case No. 07 CV 05481 RS

Plaintiffs,

**STIPULATION AND ORDER FOR A
 JUDICIALLY ISSUED SUBPOENA TO
 THE U.S. OFFICE OF PERSONNEL
 MANAGEMENT**

vs.

UNITED STATES OF AMERICA, CHAMBLIN-
 LANDES CONSTRUCTION, INC., a California
 corporation; WWD CORPORATION, a
 California corporation; DAVID FULLER,
 individually; JENNIFER RUDOLPH,
 individually; LARRY GABRIEL, individually;
 LARRY SPENCER CONSTRUCTION and
 DOES 1-50, inclusive,

Defendants,

IT IS HEREBY STIPULATED by and between plaintiffs, Kathleen Ventimiglia, individually and
 as the Guardian Ad Litem for Stephen Ventimilia and Kellie Ventimilia and defendant, Larry Gabriel,
 Architect, as follows:

1. Larry Gabriel, Architect caused a subpoena to be issued to the U.S. Office of Personnel
 Management (“OPM”) seeking records regarding retirement benefits paid to or on behalf of Joseph
 Ventimiglia as follows: ANY AND ALL DOCUMENTS REFERRING, RELATING OR
 REGARDING ANY BENEFITS, ANNUITIES OR ANY SUMS PAID TO JOSEPH VENTIMIGLIA,
 SSN 545-88-8653, RETIREMENT CLAIM NO. CS A8176222. ANY AND ALL SURVIVOR

8009903

1 BENEFITS PAID TO FAMILY MEMBERS OF JOSEPH VENTIMIGLIA.

2 2. The subpoena was signed by counsel for Larry Gabriel, Architect. The OPM responded
3 that the Privacy Act, 5 USC § 552a(b)(11), requires a "judicially-issued subpoena" signed by a Judge,
4 and not the Clerk, to produce the requested documents. See also 5 C.F.R. § 297. As such, the OPM
5 responded that it would not produce the requested documents unless the subpoena was issued by a
6 Court of competent jurisdiction.

7 Therefore, there being no objections to the OPM producing the requested records, it is agreed
8 by and between plaintiffs and defendant, Larry Gabriel, Architect, that the Court may issue a subpoena
9 upon the OPM, as required by the Privacy Act, 5 USC § 552a(b)(11) requesting: ANY AND ALL
10 DOCUMENTS REFERRING, RELATING OR REGARDING ANY BENEFITS, ANNUITIES OR
11 ANY SUMS PAID TO JOSEPH VENTIMIGLIA, SSN 545-88-8653, RETIREMENT CLAIM NO.
12 CS A8176222. ANY AND ALL SURVIVOR BENEFITS PAID TO FAMILY MEMBERS OF
13 JOSEPH VENTIMIGLIA.

14 IT IS SO STIPULATED.

15 Dated: February 24, 2009

CORSIGLIA McMAHON & ALLARD, LLP

17 By: 

18 Bradley Corsiglia
19 Attorneys for Plaintiffs,
20 KATHLEEN VENTIMIGLIA, individually
and as the Guardian Ad Litem for STEPHEN
VENTIMIGLIA and KELLIE VENTIMIGLIA

21 Dated: February 25, 2009

FISCHER SCHRADER, LLP

23 By: 

24 Daniel P. Schrader
25 Bryan P. Kerney
26 Attorneys for Defendant,
LARRY GABRIEL, ARCHITECT

27 ORDER

28 Pursuant to the above Stipulation and as Required by 5 USC § 552a(b)(11) it is hereby

8009903

1 ORDERED:

2 1. The Court will issue a subpoena to the U.S. Office of Personnel Management
3 which requests the following records signed by a Judge of the Northern District
4 of California (a proposed subpoena is attached hereto as Exhibit "A"):
5 "ANY AND ALL DOCUMENTS REFERRING, RELATING OR REGARDING ANY
6 BENEFITS, ANNUITIES OR ANY SUMS PAID TO JOSEPH VENTIMIGLIA, SSN
7 545-88-8653, RETIREMENT CLAIM NO. CS A8176222. ANY AND ALL
8 SURVIVOR BENEFITS PAID TO FAMILY MEMBERS OF JOSEPH
9 VENTIMIGLIA."

10 IT IS SO ORDERED.

11 Dated: 2/26/09

By: 

Judge of the Northern District of California

UNITED STATES DISTRICT COURT

for the

District of Columbia

KATHLEEN VENTIMIGLIA, et al.

Plaintiff

v.

UNITED STATES OF AMERICA, et al.

Defendant

Civil Action No. "MISC."

(If the action is pending in another district, state where:

Northern District of California

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISESTo: US OFFICE OF PERSONNEL MANAGEMENT
1900 E Street NW, Washington, DC 20415

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material: ANY AND ALL DOCUMENTS REFERRING, RELATING OR REGARDING ANY BENEFITS, ANNUITIES OR ANY SUMS PAID TO JOSEPH VENTIMIGLIA, SSN 545-88-8653, RETIREMENT CLAIM NO. CS A8176222. ANY AND ALL SURVIVOR BENEFITS PAID TO FAMILY MEMBERS OF JOSEPH VENTIMIGLIA.

Place: TORRI'S LEGAL SERVICES
2100 M STREET NW, SUITE 170-252
WASHINGTON, DC 20037

Date and Time:

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The provisions of Fed. R. Civ. P. 45(c), relating to your protection as a person subject to a subpoena, and Rule 45 (d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: _____

CLERK OF COURT

OR

*Signature of Clerk or Deputy Clerk*_____
*Attorney's signature*The name, address, e-mail, and telephone number of the attorney representing *(name of party)* _____

LARRY GABRIEL, ARCHITECT

, who issues or requests this subpoena, are:

Bryan P. Kerney, FISCHER SCHRADER, LLP, 888 Munras Avenue, Monterey, CA 93940
Tel: (831) 372-9200 Fax: (831) 372-9220 E-mail: bpk@fs-legal.com

Civil Action No. "MISC."

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

This subpoena for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the subpoena on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the subpoena at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the subpoena to *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because _____; or

☐ other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: